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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 STATE FARM FIRE AND CASUALTY,
9 as subrogee for Catherine Robinson,

10 Plaintiff,

11 v.
12 HELEN OF TROY, LLC, *et al.*,

13 Defendants.

14 Case No. C15-1771-RSM

15 ORDER GRANTING SANCTIONS

16 This matter comes before the Court on Plaintiff State Farm Fire and Casualty as subrogee
17 for Catherine Robinson (“State Farm”)’s Motion to Exclude John Weiss and Sanctions, Dkt. #58,
18 and the supplemental briefing requested by the Court, Dkts. #77 and #78. The Court stated in its
19 May 31, 2017, Order:

20 State Farm argues that Defendants have failed to produce the
21 complete U.L. file, software, or a “written explanation” (in lieu of
22 the Theory of Operation), despite these being subjects of State
23 Farm’s First Set of Discovery and the subsequent Court Order. Dkt.
24 #58 at 8. State Farm argues that these materials are available to
25 Defendants. Defendants fail to address this issue in their Response
26 brief. See Dkt. #66. On Reply, State Farm credibly argues that these
27 documents go to the key issues in this case: “how the heating pad is
28 designed, whether it was manufactured to that design and whether
 the heating pad caused the fire.” Dkt. #68 at 4. State Farm requests
 the Court impose the most drastic sanction it can, default judgment
 against Defendants. *Id.* at 5-6.

1 Defendants place the Court in a difficult position by failing to
2 respond to this portion of State Farm's Motion. On the other hand,
3 State Farm fails to show how the missing documents so severely
4 prejudice Plaintiffs as to warrant the extreme sanction of default
judgment, and fails to provide meaningful guidance on how the
Court could impose a less severe sanction.

5 Dkt. #76 at 5-6. The Court thus requested supplemental briefing from the parties solely on the
6 issue of how to craft an appropriate sanction under Rule 37(b)(2)(A)(i)-(ii). *Id.* at 6.

7 State Farm argues that Defendants "have impeded State Farm's ability to prove that the
8 heating pad was defectively designed and constructed and that such defects proximately caused
9 the fire," and that an appropriate sanction would be a judicial declaration that the heating pad at
10 issue was defectively designed and constructed and proximately caused the fire. Dkt. #77 at 1-

12 2. State Farm argues that both parts of this sanction are necessary because "[i]f there is a
13 determination that the heating pad was defectively designed and constructed, but no judicial
14 determination that such defects proximately caused the fire, then State Farm would be hobbled,
15 and Defendants would benefit, by non-production of the documents." *Id.* at 2. In the alternative,
16 State Farm proposes a sanction under Rule 37(b)(2)(A)(ii) preventing Defendants from offering
17 any evidence as to how the heating pad was designed or constructed, preventing Defendants from
18 cross examining State Farm's expert on these topics, and instructing the jury that they may draw
19 an adverse inference from Defendants' violation of the discovery order. *Id.* at 3-5. State Farm
20 proposes the following instruction be given by the Court:

23 The Court ordered defendants to produce to State Farm documents
24 regarding the design, construction, and operation of the subject
25 heating pad. The Defendants have not produced such documents, in
26 violation of this Court's order. You may infer from the Defendants'
27 violation of this Court's order that the documents would have
28 content favorable to State Farm and unfavorable to Defendants.

Id. at 5.

1 Defendants request that the appropriate sanction should be that Plaintiff's expert "be
2 permitted to supplement or amend their reports." Dkt. #78 at 3. Defendants argue that Plaintiff
3 now has all the information that Defendants have relied upon. *Id.* According to Defendants, this
4 proposed sanction "effectively cures any prejudice to Plaintiff and permits this matter to proceed
5 to trial on the merits." *Id.* at 4.
6

7 The Court is not inclined to follow Defendants' recommended sanction. First, because it
8 is not a sanction under Rule 37(b)(2)(A)(i)-(ii) as requested by the Court. Second, because it is
9 not a sanction that deters future behavior. Even if the prejudice to State Farm could be cured at
10 this point, allowing Defendants to go forward in this case without at least a sanction under Rule
11 37(b)(2)(A)(i)-(ii) would effectively promote similar discovery violations in the future. There
12 must be consequences for violating discovery orders.
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14 The Court has considered the sanctions proposed by State Farm, and finds that the
15 recommended sanction under Rule 37(b)(2)(A)(ii) is appropriate.
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17 Having reviewed the relevant briefing, the declarations and exhibits attached thereto, and
18 the remainder of the record, the Court hereby finds and ORDERS that the following sanction will
19 be imposed on Defendants:
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- 21 (1) Defendants are prohibited at trial from offering any evidence as to how the heating
pad was designed or constructed;
- 22 (2) Defendants are prohibited at trial from cross-examining State Farm's expert witness
as to how the heating pad was designed or constructed; and
- 23 (3) The jury will be given an adverse inference instruction similar to that proposed by
State Farm, above. Such instruction will be finalized at trial.
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2 DATED this 9th day of June, 2017.
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RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE